James Madison to Joseph C. Cabell, September 7, 1829. Transcription: The Writings of James Madison, ed. Gaillard Hunt. New York: G.P. Putnam's Sons, 1900-1910.

TO JOSEPH C. CABELL. MAD. MSS.

Montpr. Septr. 7 1829.

Dear Sir, —I recd. on the evening of Friday your two letters of Augt 30 & Sepr 1, with the copy of the Virga. proceedings in 98–99, and the letters of "Hampden."

When I looked over your manuscript pamphlet, lately returned to you, my mind did not advert to a discrepancy in your recorded opinions, nor to the popularity of the rival jurisdiction claimed by the Court of Appeals. Your exchange of a hasty opinion for one resulting from fuller information & matured reflection, might safely defy animadversion. But it is a more serious question how far the advice of the two friends you have consulted, founded on the unanimous claim of the Court having Judge Roane at its head, ought to be disregarded; or how far it might be expedient in the present temper of the Country, to mingle that popular claim wth. the Tariff heresy, which is understood to be tottering in the public opinion, & to which your observations & references are calculated to give a very heavy blow. It were to be wished that the two Judges [Cabell & Coalter] cou'd read your manuscript, and then decide on its aptitude for public use. Would it be impossible so to remould the Essay as to drop what might be offensive to the opponents of the necessary power of the Supreme Court of the U. States, but who are sound as to the Tariff power; retaining only what relates to the Tariff; or, at most, to the disorganizing doctrine which asserts a right in every State to withdraw itself from the Union. Were this a mere league,

each of the parties would have an equal right to expound it; and of course there would be as much right in one to insist on the bargain, as in another to renounce it. But the Union of the States is, according to the Virga. doctrine in 98–99, a *Constitutional Union;* and the right to judge *in the last resort* , concerning usurpations of power, affecting the validity of the Union, referred by that doctrine to the parties to the compact. On recurring to original principles, and to extreme cases, a single State might indeed be so oppressed as to be justified in shaking off the yoke; so might a single county of a State be, under an extremity of oppression. But until such justifications can be pleaded, the compact is obligatory in both cases. It may be difficult to do full justice to this branch of the subject, without involving the question between the State and Federal Judiciaries: But I am not sure that the plan of your pamphlet will not admit a separation. On this supposition, it might be well, as soon as the Tariff fever shall have spent itself, to take up both the Judicial & the anti-union heresies; on each of which you will have a field for instructive investigation, with the advantage of properly connecting them in their bearings. [???] A political system that does not provide for a peaceable and effectual decision of all controversies arising among the parties is not a Government, but a mere Treaty between independent nations, without any resort for terminating disputes but negotiation, and that failing, the sword. That the system of the U. States, is what it professes to be, a real Governt. and not a nominal one only, is proved by the fact that it has all the practical attributes & organs of a real tho' limited Govt.; a Legislative, Executive, & Judicial Department, with the physical means of executing the particular authorities assigned to it, on the individual citizens, in like manner as is done by other Governts. Those who would substitute negociation for Governmental authority, and rely on the former as an adequate resource, forget the essential difference between disputes to be settled by two Branches of the same Govt. as between the House of Lords & Commons in England, or the Senate & H. of Representatives here; and disputes between different Govts. In the former case, as neither party can act without the other, necessity produces an adjustment. In the other case, each party having in a Legislative, Executive, & Judicial Department of its own, the compleat means of giving an independent

effect to its will, no such necessity exists; and physical collisions are the natural result of conflicting pretensions.

In the years 1819 & 1821, I had a very cordial correspondence with the author of “Hampden” & “Algernon Sydney,” [Judge Roane.]1 Although we agreed generally in our views of certain doctrines of the Supreme Court of the U. S. I was induced in my last letter to touch on the necessity of a definitive power on questions between the U. S. and the individual States, and the necessity of its being lodged in the former, where alone it could preserve the essential uniformity. I received no answer, which, indeed, was not required, my letter being an answer.

1 *Ante* Vol. VIII, p. 447.

I shall return the printed pamphlet as soon as I have read the letters of “Hampden” making a part of it.

I have not the acts of the Sessions in question; & will thank you, when you have the opportunity to examine the Preambles to the polemic Resolutions of the Assembly, & let me know whether or not they present an Inconsistency. If I mistake not, Governor Tylers message emphatically denounced all imposts on commerce not *exclusively* levied for the purposes of *revenue.*

I return the letter of Mr. Morris, inclosed in yours recd. some time ago. Mr. Pollard ought to have been at no loss for my wish to ascertain the authorship of “The danger not over,” the tendency, if not the object of the republication, with the suggestion that I had a hand in the paper, being to shew an inconsistency between my opinion then & now on the subject of the Tariff power. It may not be amiss to receive the further explanations of Mr. Pollard. But I learn from Mr. Robert Taylor, who was a student of law at the time with Mr. Pendleton, that he saw a letter to him from Mr. Jefferson expressing a desire that he would take up his pen at the crisis; but without, as Mr. Taylor recollects, furnishing any particular ideas

for it, or naming me on the occasion. I believe a copy of the letter is among Mr. Jefferson's papers, and that it corresponds with Mr. T's account of it.

I comply with your request to destroy your two letters; and, as this has been written in haste and with interruptions of company, it will be best disposed of in the same way. Some of the passages in it called for more consideration & precision than I could bestow on them.

P. S. Since the above was written, I have recd. yours of the 3d. inst. There could not be a stronger proof of the obscurity of the passage it refers to than its not being intelligible to you. Its meaning is expressed in the slip of paper inclosed. The passage may be well eno' dispensed with, as being developed in that marked above by.[???]

Copy of the slip: Note that there can of course be no regular Arbiter or Umpire, under any Governmental system, applicable to those extreme cases, or questions of passive obedience & non-resistence, which justify & require a resort to the original rights of the parties to the system or compact; but that in all cases not of that extreme character, there is & must be an Arbiter or Umpire in the constitutional authority provided for deciding questions concerning the boundaries of right & power. The particular provision, in the Constitution of the U. S. is in the authority of the Supreme Court, as stated in the “Federalist,” No. 39.